

MINUTES
SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
DECEMBER 12, 2002

Board Members Present:

Judy Lever, Acting Chair, Dianne Nielson, John Newman, Craig Anderson, Cullen Battle, Bill Doucette, Lowell Peterson, Scott Widmer.

Staff Members Present:

Dennis R. Downs, Executive Secretary; Kent P. Gray; UST Executive Secretary; Candace Bleazard, Arlene Lovato; Cheryl Prawl; Scott Anderson; Gary Astin; Rusty Lundberg; David Wheeler; Sandra Allen; John Menatti; Randy Taylor, Martin Gray, Patrick Sheehan.

Others Present:

Paul Royall, Dave Spencer, Mark Williams, Raymond Wixom, David Babcock, Dennis Riding, Mina Sullivan, Clint Warby, Richard Rathbun, Kris Snow, Mark Ellis, Wayne A. Christenson, Dick Snell.

- I. The meeting was called to order at 1:00 P.M.
- II. It was moved by John Newman and seconded by Bill Doucette, and unanimously carried that the minutes for the November 14, 2002 Board meeting be approved.
- III. Underground Storage Tank Issues - Kent Gray

Underground Storage Tank (UST) General Statistics:

PROGRAM	October	November	Difference from October
Number of current tanks with a Certificate of Compliance	4,000	3,998	(2)
Number of Tanks with a Certificate of Compliance on the PST Fund	3,565	3,566	1
Total Number of Tanks Regulated	4,192	4,188	(4)
*Total Number of LUST sites closed to date	3,492	3,504	12
Total PST sites with claims or expected claims	461	460	(1)
Open + Closed Grand Total	\$86,080,467.64	\$86,416,532.43	(\$336,064.79)
PST Fund Balance	(\$66,695,596)	(\$67,388,033)	(\$642,437)
PST Assets Total	\$16,230,656.97	\$14,865,847.45	(1,364,809.52)
Loan Fund – Total Loans Made to Date	67	67	0
Total Amount Loaned to Date	\$1,822,642.60	\$1,822,642.60	0

At an upcoming meeting, a handout will be provided showing in detail the number of sites that have been cleaned up.

An Auditors Report has been received regarding the concern of the PST Fund balance decreasing. (A copy will be provided to the Board.)

- B. Approval of proposed changes to UAC R311-207 as revised, for publication on January 1, 2002, with an effective date of February 7, 2003. (Board action item.)

The proposed rules were approved by the Board for publication at the August meeting in Cedar City. They were published for public comment at the beginning of September. A public hearing was held on September 24, 2002. Numerous comments were received.

Since then, the Division staff have met to consider the comments and revise the proposed rules (The documents presented in the Board packet is the results of these discussions.)

Of the 13 changes proposed, eight received no significant comments. For these eight changes, the Division recommended that the Board adopt them as originally proposed.

The most controversial proposal was R311-207-4(i) that would have required pay for performance bidding on remediation systems costing over \$150,000. (All comments received were opposed.) Because of this opposition, the Division recommended that R311-207-4(i) not be adopted by the Board. Instead, the Division will rely on the existing authority of the Executive Secretary (UST) to determine on a case by case basis when pay for performance should be used.

The Division also recommended that R311-207-7 not be adopted. (This rule would have calculated a uniform labor rate schedule for all consultants.) While looking at it closely, it was determined that the method for gathering the data is no better than what is now in place. A single rate schedule is still desirable, but more research is needed to come up with the best way to set these rates.

Based on the comments received, the other rules were modified. These modifications are indicated in the RESPONSE TO ORAL AND WRITTEN COMMENTS document in the Board packets and reflected in the PROPOSED CHANGES AND ADDITIONS – December 2, 2002.

(The Board preferred that the rules be adopted as a whole.)

It was motioned by John Newman, seconded by Dianne Nielson, and unanimously approved to adopt the proposed rules. The Board also encouraged the Executive Secretary (UST) to continue efforts in encouraging Pay for Performance.

IV. DEQ Rules regarding emergency meetings and electronic meetings - Dennis Downs

The Department is implementing two rules in regards to meetings via telephone or audio/visual. R305-2 covers policy for electronic meetings. This rule establishes procedures for conducting a telephonic or electronic meeting, including notification, procedures, provisions for telephonic and electronic appearance, and anchor location.

R305-3 establishes procedures for conducting an emergency meeting, including notification procedures, provisions for telephonic and electronic appearance, and anchor location.

From here on the Division will include a statement on the Board meeting notices that will state that some members may participate telephonically so that the public will be given proper notice.

V. Planning/Used Oil Issues - Cheryl Prawl

- A. Stipulation and Consent Agreement #0105019 between Indian Oil and the Board to resolve the Notice of Violation issued January 10, 2002.

A Notice of Violation (NOV) was issued to Indian Oil because they were operating a transfer facility without a permit. A Stipulation and Consent Agreement (SCO) was agreed upon in the amount of \$14,485, with \$8,484 deferred. Indian Oil will pay \$6,000 of the penalty in installments.

The 30-day public comment period began on November 1, 2002 and concluded on November 30, 2002. No comments were received.

Cullen Battle asked what kind of information was evaluated to determine this facility's ability to pay. He also asked if an audit of the cash flow of the business itself was performed to determine whether large amounts of money/profit were being taken out, leaving the Company in a position where it was unable to pay.

Ms. Prawl explained that Indian Oil is a very small "Mom and Pop" organization. They purchased Pulsar, which is an antifreeze recycling business. Shortly after this purchase, they had a fire in the antifreeze still and burned the building to a point that they couldn't recycle antifreeze. They never recovered financially from this incident.

Clean up has not taken place to date, but there is a company out of Seattle that is interested in purchasing the business, which in turn would assist Indian Oil with paying the penalty as well as the clean up. A letter of intent has been signed.

Cullen Battle was uncomfortable concerning the SCO. He didn't feel that a company should be allowed to pollute the environment and then not be able to pay the appropriate penalty.

Dennis Downs explained that in the law, it is a legal option to defer some of the penalty in situations where they do not have the ability to pay. This company does provide a service to citizens of the State of Utah by recycling used oil. The Division strives to keep a company

operating if they stay in compliance. If it is believed that a company can stay in business and survive as a viable company, and can work in compliance of the law, then the Division has tried to work with them within the rules to allow them to operate their business.

Mr. Downs also pointed out that the Division could also take the hard line, which has been done on occasion, and the company goes bankrupt. Another piece of that scenario is that if the company stays in business, and if there is a clean up that is needed, they have a continuing ability to address remedial issues if needed versus going out of business and leaving the clean up for the Superfund Program.

****It was moved by Scott Widmer and seconded by Lowell Peterson, and majority ruled that SCO #0105019 for Indian Oil be approved. Cullen Battle opposed the motion.**

B. Stipulation and Consent Agreement, #0208013 between Indian Oil and the Board to resolve the NOV issued February 19, 2002.

Findings while inspecting at the Indian Oil Company between April 20, 2000 and August 31, 2001 lead to an issuance of a Notice of Violation (NOV) to Indian Oil. Violations noted in the NOV included:

- Not immediately reporting a used oil release in excess of 25 gallons;
- Not cleaning up all of the released material and any contaminated soil; and
- Not reporting in writing a used oil release in excess of 25 gallons within 15 days of the event.

A Stipulation and Consent Order (SCO) has been negotiated. Indian Oil submitted financial information to substantiate an inability to pay claim relating to the penalty proposed by the Division; therefore, the proposed SCO includes a cash penalty of \$16,400 that will be deferred, contingent upon cleanup of the contaminated soil at the rail spur site by December 31, 2002.

Note: Delays on site access resulted in a delayed cleanup schedule. The Board will be updated on this issue.

****It was moved by Bill Doucette and seconded by Scott Widmer, and majority ruled that the SCO #0208013 for Indian Oil be approved. Cullen Battle opposed.**

C. Stipulation and Consent Agreement between Golden Eagle and the Board

Golden Eagle was issued a Notice of Violation (NOV) August 24, 2000. There were several findings at the time of inspection. To resolve the NOV, a Stipulation and Consent Order (SCO) was negotiated. A \$10,000.00 cash penalty will be paid with a \$48,000.00 supplemental environmental project.

This NOV went out for public comment on November 1, 2002 and concluded on November 30, 2002. There were no comments received.

Bill Doucette inquired as to what the plans were for an SEP. Ms. Prawl had a draft of what they planned to do, which is to hire an independent auditor to come onsite and audit their facility every four months. They will pay the auditor to do this and the results will be given to the Division so that their progress can be tracked.

Dianne Nielson questioned whether the choice of the auditor would be made by Golden Eagle or the Division. Ms. Prawl responded that the individual would be chosen by Golden Eagle's attorney. Ms. Nielson was concerned that an arrangement might be made that tends to favor Golden Eagle and the auditor.

Ms. Nielson stated that usually a Supplemental Environmental Project is an added benefit that goes beyond what is expected. Auditing their performance to insure that a business is compliant to the law is something that the Division expects under the permit. Ms. Nielson was concerned about setting a precedent for paying auditors, or anyone, to insure that they comply with the law, is not within the definition of a supplemental environmental project.

Dennis Downs offered that in this particular case, staff members have looked at approving this, which would allow them to hire an auditor, which, under normal situations, they wouldn't have to do, although they are required to be in compliance; however, they decide what is the best way to do that. Mr. Downs pointed that presently, the SEP is in draft form.

Dianne Nielson did not believe that approving the SCO makes a determination one way or the other.

Ms. Nielson questioned if an NOV could be issued based on those audits performed by the private auditor, or if they are protected under disclosure. Ms. Prawl responded that if any infraction is found by the private contractor and not corrected within the next audit, which is 90 days, the Executive Secretary could then initiate enforcement action.

Ms. Nielson suggested that she would feel better if the Division were the ones in charge of this auditing. She was uncomfortable with the possibility that this could be used as an audit to shield the company from enforcement actions, as apposed to ensure that they are more compliant than they have been in the past.

Mr. Downs suggested that the Division staff look more closely at the self audit provision and make sure that it does not establish a shield for this company.

Bill Doucette pointed out that the Board had approved SCOs in the past without knowing specifically what the SEP would be. But given the controversial aspects of this NOV, he wondered if the whole process should be revisited and a copy of the SEP given to the Board before approval is given instead of after the fact.

Mr. Downs pointed out that the money associated with doing an SEP is not the penalty dollar value. They are not equivalent, but more than the penalty would be. Mr. Downs had no problem with presenting the proposed environmental project and obtaining the Board's approval prior to

approving the SCO. The only drawback on that would be the time frame. In some cases a fast resolution is preferable just because there is something that needs to be done.

Judy Lever referred to paragraph 8a of the Consent Order asked Raymond Wixom, Assistant to the AG's Office, if that could easily be solved where it says, "perform a supplementary environmental project approved by the executive secretary." Ms. Lever asked if DSHW staff could add, "approved by the Executive Secretary and the Board." Mr. Wixom responded that it could be done.

John Newman took a different point of view. He felt that he was more prone to delegate this issue to be resolved by the Executive Secretary and encourage him to be even handed in all cases, treating similar cases alike. Mr. Newman thought that SEP's could be filed with the Board as they are approved so that the Board is aware of what is being approved. The Board could then offer comments to the Executive Secretary.

Craig Anderson had some concerns when he read through the NOV, particularly dealing with the findings of falsification of records and information that is critical for the DSHW staff members to do their audit. He asked Ms. Prawl what was found regarding falsification of records. Ms. Prawl responded that Golden Eagle is required to do an analysis of the used oil to make sure it is on spec. Golden Eagle had documentation, but when it was looked into by the auditor that DSHW hired through the Division of Oil, Gas, and Mining, it was discovered that the analysis had been falsified for different tanks, shipments, and that Golden Eagle had only done one analysis for all of the used oil that year and falsified six other audits by whitening out the date and typing in a new date.

Judy Lever asked why criminal sanctions had not been performed. Mr. Battle and Mr. Anderson also felt this was criminal. Ms. Prawl offered that it was certainly an option, but the Division chose to give the company a warning, and work with them to get them back into compliance. Ms. Prawl didn't feel this company was aware of the seriousness of this action.

Merrill Maughan was in the audience, owner of Golden Eagle, and stated that they had only received the oil from two places. One was Kennecott and the other one was Quaker State. His facility had all kinds of analysis on that oil. Rather than taking the time to find it, "as busy as we were," they just went ahead and changed the dates. Since then, Mr. Maughan has supported anything that Cheryl Prawl wanted to do.

****It was moved by John Newman and seconded by Lowell Peterson that the SCO be approved. The motion failed. Craig Anderson, Scott Widmer, Cullen Battle, and Bill Doucette were opposed. The Board moved to table the action until the January Board Meeting.**

Defer decision until the Board can receive instruction concerning Supplemental Environmental Projects and how it ties into the Golden Eagle issue.

Mr. Downs offered to have DSHW staff members give a presentation for the Board during the January Board meeting concerning Supplemental Environmental Projects.

****It was moved by Scott Widmer and seconded by Bill Doucette, and majority carried that this action be tabled pending more information at the January Control Board meeting. John Newman was opposed.**

VI. Other - Dennis Downs

A. Joe Melling is retiring at the end of this month after 23 years as City Manager for Cedar City. His term on the Board will go until May and he has consented to remain on the Board until his term is up. Joe has given a great service to Cedar City and also as a Solid and Hazardous Waste Control Board member over the years.

B. There are two reports concerning the Deseret Chemical Depot that are available. One of them is the Army Safety Report, which was presented to the Board during the October Board Meeting. The Division has signed a nondisclosure agreement with the Army, and DSHW staff has seen the complete report. The Division believes that the Army and the contractor, EG&G, is addressing all of the issues that the Division is aware of.

The second report has received some news media coverage in the past few weeks. Mr. Downs gave the Board a copy of the news release initiated by the National Research Council. This Council looked at incidents from JACADS as well as the TOCDF facility at Deseret Chemical Depot, and came up with some recommendations on what the Army can do better. Attached to this report were two news media articles, one in the Salt Lake Tribune and one from the Anniston Star, which is the Alabama newspaper.

The NRC did find a number of things where they thought there should be improvement. At the last Board meeting, Tom Kurkky gave a report on the steps the Army is taking to improve their safety culture. These safety procedures are well on their way to being implemented.

VII. The next Board meeting will be held on January 9, 2003 at 1:00 p.m., in the DEQ Building #2 Conference room #101.